

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:15-CR-157-F-1

UNITED STATES OF AMERICA)
)
)
vs.)
)
GREGORY LAMONT AVERY,)
)
Defendant.)
_____)

**PRELIMINARY ORDER OF
FORFEITURE**

Before the court is the Government's Motion for Issuance of Preliminary Order of Forfeiture pursuant to Rule 32.2(b) of the Federal Rules of Criminal Procedure.¹ [DE 28].

On May 12, 2015, Defendant was charged in a 14-count indictment with violations of the Controlled Substance Act, specifically, 21 U.S.C. §§ 841(a)(1), 846, and the Gun Control Act, 18 U.S.C. §§ 18 U.S.C. § 922(g)(1), 924(c)(1)(A). On March 28, 2016, Defendant entered into a Memorandum of Plea Agreement as to counts one (21 U.S.C. §§ 841(a)(1), 846) and thirteen (18 U.S.C. § 924(c)(1)(A)) and agreed, *inter alia*, to "voluntarily forfeit and relinquish to the United States" the following personal property: (1) \$9,980 in U.S. Currency; (2) one Beretta 9mm semiautomatic pistol, SN: NU112228, and ammunition; and (3) 2003 Denali Yukon XL, 4-door, white in color, VIN: 1GKFK66UX3J236398. *See* Mem. Plea Agreement ¶ 2(e) [DE 23]. Defendant was sentenced on August 4, 2016.

¹ This civil forfeiture may be pursued in this criminal proceeding by virtue of 28 U.S.C. § 2461(c).

By virtue of the Memorandum of Plea Agreement and Defendant's agreement therein, the court finds the United States is entitled to possession of said property pursuant to 18 U.S.C. § 924(d)(1)² and 21 U.S.C. § 853.³

Accordingly, it is ORDERED as follows:

- (1) The Government's motion [DE 28] is ALLOWED;
- (2) The United States is authorized to seize the above-stated property, and that property is forfeited to the United States for disposition in accordance with the law, subject to the provisions of 21 U.S.C. § 853(n), as allowed by Fed. R. Crim. P. 32.2(b)(3). This Order is now final as to Defendant.⁴
- (3) The Clerk of Court is DIRECTED to incorporate a reference to this Preliminary Order of Forfeiture in the applicable section of the Judgment in a Criminal Case;⁵
- (4) The United States shall publish notice of this Order and of its intent to dispose of the property in such manner as the Attorney General or the Secretary of Treasury directs, by publishing and sending notice in the same manner as in civil forfeiture cases, as provided in Supplemental Rule G(4);⁶
- (5) Any person other than Defendant, having or claiming any legal interest in the subject property must file a petition with the court within 30 days of the publication of notice or of receipt of actual notice, whichever is earlier. The petition must be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the subject property, and must include any additional facts supporting the petitioner's claim and the relief sought;⁷ and

² 18 U.S.C. § 924(d)(1) provides in relevant part that "[a]ny firearm or ammunition involved in or used in any knowing violation of 18 USCS § 924 . . . shall be subject to seizure and forfeiture"

³ 21 U.S.C. § 853 provides in relevant part that with respect to "[a]ny person convicted of a violation of this title . . . punishable by imprisonment for more than one year . . . [t]he court, in imposing sentence on such person, shall order . . . that the person forfeit to the United States all property described in this subsection."

⁴ See FED. R. CRIM. P. 32.2(b)(4)(A) (stating a preliminary forfeiture order is final as to the defendant at "sentencing – or at any time before sentencing if the defendant consents").

⁵ See FED. R. CRIM. P. 32.2(b)(4)(B).

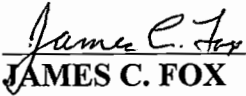
⁶ See 18 U.S.C. § 853(n)(1).

⁷ See 18 U.S.C. § 853(n)(2)-(3).

- (6) Upon adjudication of all third party interests, the court shall enter a Final Order of Forfeiture pursuant to 21 U.S.C. § 853, as required by Fed. R. Crim. P. 32.2(c)(2).

SO ORDERED.

This the 8th day of August, 2016.



JAMES C. FOX
Senior United States District Judge